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HUSBAND'S DUTY TO REIMBURSE WIFE FOR EXPENDITURES FOR NECESSARIES. — It is a well-settled principle of the common law that a husband is under legal obligation to furnish necessaries for the maintenance of his wife, in the absence of misconduct on her part;[1] and the modern legislation enlarging the scope of a married woman's powers has not lessened the extent of this obligation.[2] And where the husband fails to perform his duty, the wife may pledge his credit for necessaries. This right has been based on a doctrine of implied agency,[3] or agency by necessity,[4] but is more properly regarded as a personal right inherent in the wife, created by law and in no way dependent upon the existence of an agency in fact.[5] But by the generally accepted doctrine, the husband is not liable where necessaries are furnished the wife on her personal credit,[6] or that of a third party.[7] And some courts of law hold that money loaned to a wife is not a necessary, even though borrowed for the express purpose of purchasing necessaries,[8] but in other jurisdictions the contrary result has been reached when the money was actually so expended.[9] And when

[1] The obligation persists even though he is imprisoned, Ahern *v.* Easterby, 42 Conn. 546; or insane, Read *v.* Legard, 6 Exch. 636; or has attempted to free himself from the duty by express contract with her, Ryan *v.* Dockery, 134 Wis. 431; and the fact that she possesses a separate estate is immaterial, Ott *v.* Hentall, 70 N. H. 231; although some courts have held that where she lives apart from him for just cause, the existence of an ample estate relieves him of his duty. Hunt *v.* Hayes, 64 Vt. 89.

[2] Flynn *v.* Messenger, 28 Minn. 208.

[3] Pierpont *v.* Wilson, 49 Conn. 450.

[4] East *v.* King, 77 Miss. 738.

[5] See Cromwell *v.* Benjamin, 41 Barb. (N. Y.) 558.

[6] Weisker *v.* Lowenthal, 31 Md. 413. *Contra*, Edminston *v.* Smith, 13 Idaho 645.

[7] Harvey *v.* Norton, 4 Jurist 42.

[8] Marshall *v.* Perkins, 20 R. I. 34.

[9] Kenny *v.* Meislahn, 69 N. Y. App. Div. 572.

this is the case, practically all courts of equity now permit a recovery by an application of the principle of subrogation.[10]

But if the husband's credit is worthless the wife's rights are not, in the absence of statute, adequately protected, for if a divorce or legal separation is not desired she cannot generally enforce her right of support directly against the husband. Some jurisdictions allow a bill in equity for maintenance,[11] but no action at law for damages has ever been given her when there is a breach of the legal duty.[12] In a recent case, a wife, abandoned without just cause, who secured necessaries with the proceeds of her own labor and separate estate, was allowed to recover at law the amount so expended on the ground of subrogation to the rights of the third party furnishing the necessaries. *De Brauwere* v. *De Brauwere*, 44 N. Y. L. J., Nov., 1910 (N. Y. Sup. Ct.). Granting the right of the third party to recover from the husband, and the recognition at law of the doctrine of subrogation, the case is clearly one for the application of the principle that one, other than a mere volunteer, who for his own protection pays a debt which in good conscience should have been satisfied by another, becomes subrogated to the creditor's right against the other.[13] That the wife is not a volunteer in such a case is apparent, since it is only the instinct of self-preservation and not a desire to confer gratuitous benefits which leads her to perform his obligation. Subrogation has been allowed where a third party advances money for necessaries,[14] and certainly the wife should stand in no worse position than any other creditor of the husband.[15] And where a wife becomes liable for the payment of her husband's debt by signing notes as a joint maker with him, it being shown that she is only a surety thereon, a satisfaction of the notes with her own money entitles her to be subrogated to the holder's rights against the husband.[16]

The decision in the main case is based on established legal principles and accords with sound public policy, and it is only the tardiness of the law in coming to such a conclusion that calls for comment. It is submitted, however, that the husband's liability in all these cases should be based on principles of quasi-contract to prevent his unjust enrichment rather than upon the technical doctrine of subrogation.

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MAY STATE OF DOMICILE TAX GIFTS MADE ABROAD WHEN THE PROPERTY IS LOCATED ABROAD. — Since the case of *Union Transit Company* v. *Kentucky*,[1] it has been clear that property cannot be taken under the guise of taxation, except where benefit has been conferred by the state upon the person taxed, and that the general benefits conferred by a state upon those domiciled within its borders are not sufficient to support a

[10] Deare *v.* Soutten, L. R. 9 Eq. 151; Kenyon *v.* Farris, 47 Conn. 510. *Contra*, Skinner *v.* Tirrell, 159 Mass. 474. This case may be distinguished on the ground that the money was advanced on the wife's credit.

[11] Galland *v.* Galland, 38 Cal. 265.

[12] Decker *v.* Kedly, 148 Fed. 681.

[13] Cole *v.* Malcolm, 66 N. Y. 363, 366.

[14] Kenyon *v.* Farris, *supra*.

[15] Manchester *v.* Tibbets, 121 N. Y. 219.

[16] *In re* Nickerson, 116 Fed. 1003.

[1] 199 U. S. 194.